THE CONSTITUTION.—No. 9.

BY L. BONNEFOUX.

THIS NUMBER TREATS THE FOLLOWING CONSTITUTIONAL QUESTIONS:

SUPREMACY OF THE NATIONAL GOVERNMENT OVER THE SEVERAL STATES OF THE UNION.

CONSTITUTIONAL JURISDICTION OF THE NATIONAL GOVERNMENT OVER REVOLTED STATES.

FALLACY OF STATE RIGHTS, BASED ON STATE SOVEREIGNTY.

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EXPLANATORY REMARKS.

The manuscript of the matter contained in the article headed "THE CONSTITUTION, No. 9," was written in Paris, in the spring of 1863. It was part of a treatise on the Constitution of the United States which the writer thereof had intended to prepare at his leisure ever since 1850. Said writer resided in Washington in the winters of 1849 and 1850, when the question of the Wilmot Proviso, the admission of California in the Union, and the Compromise measures were agitated; two parties, with conflicting views, pretended each that its own views were *constitutional*, while those of the other party were, on the contrary, *unconstitutional*. The impartial observer, in order to see which party was right, had necessarily to look into the Constitution, that is, the Text Book; this is what the writer of this article did, but in order to come to a clear insight of the subject he had to look into the debates of the Convention which framed the Constitution; into the documents containing the proceedings which took place preparatory to the adoption of the Constitution; into the Articles of Confederation; into the Ordinance of July, 1787, &c., &c. After a careful investigation of the whole, he concluded that both parties were wrong, inasmuch as the *form* of Government which went into operation in 1789 *did not seem to be understood* by either party. It was then that the writer of this article collected materials with a view of writing a Treatise on the Constitution, but travelling abroad prevented its accomplishment. The rebellion that took place in 1861 brought the subject again into his mind, and from the 12th of October, 1861, to the spring of 1863, six detached articles on the Constitution were published; in May, 1863, two more articles—Nos. 7 and 8—were forwarded, from Paris, to Mr. Bryant, of the *Evening Post*, who had the kindness to have them published in a pamphlet form in the month of July following. On the 24th of November, 1863, the writer being then in New York, the first part of the "CONSTITUTION, No. 9," was published in the *Evening Post;* the whole of that number is now herein published in a pamphlet form. No. 10 will be the last of the series, and when published, it will contain, besides, a comprehensive digest and compendium of the whole.

The Article headed "National Sovereignty and State Rights," has been inserted herein *verbatim* in the form that it had been addressed to the editor of the New York *Times*, because it seems to corroborate views previously expressed—page 8—in the article republished above, from the *Evening Post* of Nov. 24th, as to the fact, that *Public men* in the United States *seem to be tainted with the prevailing heresies in general circulation*, on the subject of the Constitution; these views are concluded as follows:

"To this remark it may be added, that the political leaders of the various parties, which have sprung up for the last fifty years, have been more or less tainted with the prevailing heresies in general circulation."

New York, October 29th, 1864.

L. B.

New York, Oct. 14th, '64.

The article which follows, headed "The Constitution, No. 9," was first published in the New York *Evening Post* of the 24th of November last, with the following editorial remarks:

Power of the Federal Government over the States.

The question of the supremacy of the Federal Government within its constitutional sphere over the several States of the Union, is ably discussed in an article on our first page, from the pen of Mr. Bonnefoux, author of a pamphlet entitled "Exposition of the Constitution," which we published not long since. It is intended as a continuation of the subject treated of in that pamphlet. Mr. Bonnefoux, it will be seen, holds that a State offending against the prohibitions of the Constitution may, by the terms of that instrument, be subjected to punishment, which it is within the discretion of the Federal Government to impose. This view of the subject is one of great importance, and deserves careful consideration.

In view of the great importance of the subject above alluded to, it has been thought desirable to present said article to the appreciation of the public in general, and to the consideration of Congress, at its next session, in the convenient form of a pamphlet.

THE CONSTITUTION—No. 9.

SUPREME POWER OF THE NATIONAL GOVERNMENT OVER THE SEVERAL STATES.

PARIS, March 15, 1863.

Clauses 1, 2, 3, of Section 10 in Article I. of the Constitution, enumerate various powers of a national nature, which are *expressly* prohibited to the several States: Clause 1, for instance, provides that—

"No State shall enter into any treaty, alliance, or confederation."

It is self-evident that the people of the United States—that is, the *constituent powers* which *ordained* the Constitution—must have understood that the National Government created by them, for the *avowed* special purpose of *securing* and *perfecting their union*, should be entrusted with ample and sufficient powers to *enforce on the several States* a due compliance to the prohibitions so explicitly enjoined upon them in the *formal behests* of the *national covenant*.

The framers of the Constitution did faithfully and effectually perform their duty. *Firstly*, By virtually constituting the President of the United States the *special preserver* and custodian of the Constitution; entrusting him, in case of danger to the Union, with unrestricted discretionary powers to vindicate the supremacy of the National Government; this *significant* fact has been irrefutably established in the preceding article.

Secondly, By investing Congress with the sovereign right to punish treason; this has been done in Clause 2 of Section 3, in Article III. of the Constitution, which is as follows:

"The Congress shall have the power to declare the *punishment* of *treason*."

It follows, rigorously, from the above premises, that whenever any State, or States, infringe any of the prohibitions that the "constituent power" has thought fit to *ordain*, that the President, who is bound to "take care that the laws be faithfully executed," (see Section 3, in Article II.,) shall summon such infringing State or States to refrain from violating thus the Constitution; and if, in consequence of violations thereof, *hostilities* follow, such "hostilities" shall *necessarily constitute*, on the part of the delinquent States, the fact of *levying war against the United States*. Now, the act of "levying war against the United States" is declared in Section 3 of Article III. of the Constitution to be *treason*; such States that shall be guilty of levying war against the United States, shall, by so doing, commit the crime of "treason," and shall, thereby, be amenable to any penalty that Congress shall decide proper to enact and inflict by virtue of Clause 2 in Section 3, of Article III., which provides, as stated above, that:

"The Congress shall have the power to declare the *punishment* of *treason*."

The delinquent States that may have thus, through their own willful acts, feloniously violated and cancelled the allegiance to the Constitution they were solemnly bound to by a sacred covenant, have thereby forfeited all rights and privileges they held under that instrument, and whenever overcome by force, they are constitutionally amenable, as stated above, to the jurisdiction of Congress, and to the punishment and penalties which that national body shall decide upon as proper to enact; Congress, in such a case, will constitute a grand National Court of Justice, acting in pursuance of the *special power* delegated by the constituent power which *ordained* the Constitution "to declare the *punishment* of *treason*."

The framers of the Constitution, by *combining* thus the above recited provisions of that instrument for the purpose of efficaciously protecting the Union against any minority of States that might confederate against it, formally empowered thereby the National Government to vindicate and *enforce* effectually its supremacy over separate States. [See Remarks A at end.]

The *supreme* power of the National Government over separate States is further rigorously and emphatically ORDAINED in Clause 2, Article VI. of the Constitution, which is as follows:

"The Constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the SUPREME law of the land; and the *judges* in every State *shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.*"

Moreover, Section 8, in Article I. enumerates seventeen distinct sovereign powers of a national character conferred on Congress by the constituency which ordained the constitution. This enumeration of powers is followed by the following *significant* provision (Clause 18):

"To make all laws which shall be necessary and *proper* for carrying into execution the foregoing powers, and *all other powers* vested by this constitution in the Government of the United States, or in any department or officer thereof."

The qualification of "proper" implies that the National Government, under due responsibility to the constituent power, is to be *the judge* of the propriety of any law intended to carry out any of the *powers* expressly delegated to Congress by virtue of the above transcribed provision; it shows, in one word, that the framers of the Constitution meant that the National Government should be entrusted with a *liberal construction* of the powers *expressly* delegated to Congress. The expediency and the *propriety* of the "*means*" to carry out such expressly delegated powers as Congress shall decide fit to adopt cannot be questioned as to their *positive constitutionality.* Any citizen has the undoubted right to express his own individual opinion as to the propriety or *policy* of these "means," but no separate State, nor any of the officials of State governments, are competent, in

their civil or judicial capacity, to *decide* as to the constitutional propriety of a law enacted by Congress in pursuance of Clause 18, in Section 8 of Article I; the *constituent power of the United States only can* overrule the "propriety" of the "means" devised as "proper" by Congress; the whole people in conventions assembled form and embody the constituent power, and a formal decision of a three-fourths majority of these conventions constitutes, actually, the supreme law of the whole Union; this three-fourths majority can, of course, reverse the action of Congress and pronounce a formal decision as to the *propriety* of the "means" devised by the national Legislature.

The obvious bearing (as above exposed and established) of Clause 18, in Section 8 of Article I, has been fully confirmed by the Supreme Court of the United States. In the year 1791, a Bank of the United States was chartered by Congress. The power to grant a charter was opposed as *unconstitutional*, on the ground that the *power* to *charter a bank* is not among the powers *expressly* delegated to Congress. The Supreme Court ruled out this plea and construction, and declared the bank *constitutional*, inasmuch that Congress was *specially* entrusted, by virtue of Clause 18, in Section 8, of Article I—with the choice and discretion of the "means" it thought "proper" to devise in order to carry out its *expressly* delegated powers. This precedent is conclusive, and absolutely debars State governments, State courts, and State officials generally, from questioning the powers of Congress in the premises.

The supreme power of the National Government over State governments and over State authorities, both civil and judicial, has been, according to the above exposition, fully established by the framers of the Constitution. This was the *avowed principal object* they had in view, and this *principal* "object" was *acknowledged*, at the time the *National Covenant* was adopted and ratified, to have been accomplished, both by its supporters and opponents. The historical records of these days show, that the opponents of the form of government devised by the framers of the Constitution—which they sneeringly qualified as constituting a consolidated government—opposed its adoption; but they had to give way to the *pressure* of public opinion in its favor; and the just expectations of the far-sighted leading statesmen of

the times, and of the people at large, were fulfilled by the formation of an *efficient* National Government.

It has been laid down and shown, at the start of this article, that the framers of the Constitution had devised, combined and connected several provisions "for the purpose of efficaciously protecting the Union against any minority of States that might confederate against it, *formally* empowering thereby the National Government to vindicate and *enforce* effectually its supremacy over separate States," and that a *special power* had been delegated to Congress, in general terms, "to declare the punishment of treason." This "power," having been delegated in general terms, implies necessarily that Congress is to be the discretionary and supreme judge of the penalties to be inflicted whenever "treason" occurs. The outrageous and unprovoked armed rebellion now existing in the United States will demand, whenever subdued, that this high prerogative of sovereignty—that of inflicting the punishment of treason—should be so exercised as to vindicate the paramount authority of the constituent *power* which *ordained* the national Union.

It is intended herein to indicate the nature of the penalties that it might be judicious *for Congress* to inflict; but, preparatory to doing so, it is proper to demonstrate that the fallacious doctrine of STATE RIGHTS, and the unwarranted pretension that the separate States are *sovereign* powers, *constitute*, actually, the determining causes of the rebellion which had taken place. These disorganizing doctrines have been so insidiously and persistingly disseminated that they are naturally believed to be orthodox by a majority of the citizens of the United States, and inferences cunningly drawn therefrom impart plausibility to the *barefaced imposture given out to the world*, that the *national form* of government established by the Constitution of the United States, ratified in 1788 by nine States, constitutes a confederation or confederacy of *sovereign* States. The present generation of Americans, it has been remarked in the preceding number, "know very little about their Constitution; they are content to enjoy its benefits without troubling themselves how they have been acquired or secured. * * * * * They leave constitutional matters to be settled by partisans and quibbling lawyers, by unscrupulous demagogues and newspaper

scribblers. These facts explain how the American people, so intelligent generally on other matters, have been *deluded* and led into false issues, adopting as orthodox *fallacious* doctrines on the subject of the Constitution, the *fallacy* whereof they could easily detect were they to read and investigate the text book with the same attention they scan the items of the money market." To this remark it may be added, that the political leaders of the various parties which have sprung up for the last fifty years have been more or less tainted with the prevailing heresies in general circulation.

It becomes, therefore, a matter of great importance to *uproot the dangerous perversions of the Constitution* above alluded to by showing how they originated, and, by exposing their utter fallacy, exhibit to the light of truth the trickery of the most *impudent and artful juggle* of modern times.

[TO BE CONTINUED.]

NEW YORK, Oct. 14th, 1864.

The *continuation* of—THE CONSTITUTION No. 9—was not, as intended, published in the *Evening Post*, but the substance thereof was embodied in the underneath communication addressed lately to the *N. Y. Daily Times*—insertion thereof, in said paper, having been declined, it is now published underneath.

NATIONAL SOVEREIGNTY AND STATE RIGHTS.

TO THE EDITOR OF the NEW YORK TIMES:

Your paper of the 22d inst. contains an article headed "National and State Sovereignty" intended seemingly, to vindicate "The Sovereignty of the American Union" over the States, but containing an *admission* which may be used by captious people and designing men to invalidate the very point sought to be established.

It is stated in aforesaid article, that the South and its office-seeking Allies in the North—"have dishonestly and treasonably sought to invade, take back, and destroy the well defined National Sovereignty which the *States* had distinctly and unani-

mously *granted to* and vested in the Union for the common protection and welfare of all."

Now, the expression *States* may be understood as implying the constituent Power of the States, that is, the People thereof, taken in that sense, the "expression" States—may, to a certain degree, be appropriate; but if said expression is understood to mean the Legislature and officials administering the government of said States, respectively, for the time being, then such an expression is altogether misplaced and erroneous—the *States*, implying by that expression,—the States' governments, did not *grant* the "National Sovreignty" vested in the Union; they did not receive from the people any authority whatever on the subject. The constitution, having in view to effect the Union and create "National Sovreignty," was *ordained by the People*, as may be seen in its preamble, and Article VII. thereof—thus provides the Covenant of its being binding to the *people* of each State, respectively.

"The ratification of the *Conventions* of nine States, shall be sufficient for the Establishment of this Constitution between the States, so ratifying the same."

The *State governments* of the States ratifying the Constitution, were thus *divested* by the people thereof from all the Sovereign powers of a National nature, which the people of each ratifying State had agreed and deemed proper, by solemn compact, to *grant* to a common National Government. It was through this process that the people of the various States *became united and merged into one People*, that is, as stated by Washington (in his first Inaugural Address to Congress, and in his Farewell Address to the People) *One Nation;* styled by him—The American People.—The powers and attributions, that the people of each State left to the States' governments, became, thereby, *mostly municipal*, and were limited in each State, respectively, to such State Constitution that the people thereof in convention assembled, choose to adopt.

The various fallacies which have been started, by designing men, as to the real nature of the principles of government which guided the framers of the Constitution, may be traced up to the seemingly careless use of words having a double meaning. The very expression, *States*, above defined, was used in the

notorious resolutions of 1798 (passed by the State of Virginia) in an equivocal sense, that gave rise to misapprehensions which have been the subject of party strife to this day. The first resolution was as follows:

1st. "That the Constitution of the United States was a compact in which the *States* were parties, granting limited powers of government."

The above resolution being passed by a mere Legislatnre, the expression *States*, used therein, is obviously intended to mean, the States' governments; and the assertion, that the *States*, meaning, thereby, the States' governments, were parties to the Constitution, is clearly untrue, as it has been already shown; no constitutional power whatever has been delegated to the Legislatures of the States to interfere with the Acts of Congress, and the Legislature of Virginia, by passing the resolutions of 1798, has assumed an authority derogatory to the constitution and subversive thereof.

The resolutions of 1798, were passed at a time of great political excitement; Congress, under the administration of John Adams, had enacted laws designated at the time "The Alien and Sedition Acts," which were publicly denounced as unconstitutional; and it must be admitted that the enactment of such Acts was justifiable only in time of war, which was not then the case, but the rising tide of public opinion was sufficient to effect their repeal. The resolutions of the Legislature of Virginia, stated, in substance, that they had the right *to interpose* against the laws of Congress. This startling pretension was sustained by one *Legislature only*, that of Kentucky. This assumption of authority by a mere Legislature, was justly considered as a *manifest* violation of the Constitution; Washington, from his retirement at Mount Vernon, strongly denounced these resolutions as anarchical, and solemnly gave warning, that if such disorganizing doctrine as was contained therein, was to be acted upon, that it would surely lead *to the disintegration of the Union.* The constitutional remedy for unpopular Acts of Congress, is, the action of public opinion properly directed to secure the election of members of Congress pledged to repeal the obnoxious laws complained of. There is, besides, a radical mode of redress provided for in the Constitution, which is effected by

the ultimate decision of a three-fourths majority of conventions of the people of the States in the Union. The Constitution was made *absolutely* binding on the people of each State, respectively, which ratified it, from the day that it was ratified by a *three-fourths majority* of the whole: this three-fourths majority constitutes, therefore, fundamentally, the Supreme Law of the land, and controls alike, Congress, President, and Supreme Court of the United States.

The forebodings of George Washington, as to the evils resulting from the adoption of the disorganizing doctrine of State Rights laid down in the resolutions of 1798, were fully justified by subsequent events; in 1832, John C. Calhoun broached *thereon* his scheme for the nullification of the laws of the United States, this was, however, put down by that trusty guardian and watchful preserver of the Constitution, President Andrew Jackson; but the disorganizing doctrine of State Rights had been insidiously disseminated throughout the United States; it was represented to be—The Landmark of the Democratic party—The assumed *interposition* of a Legislature against a law of Congress, had been the first inroad of that disorganizing doctrine; *nullification* came next; and finally, in 1860, we have had *secession and rebellion;* thus realizing the prediction of Washington *in its full extent*, unless the supremacy of the National Government be *ultimately* vindicated.

One year ago last summer, a mere official of a State, Governor Seymour, of the State of New York, took upon himself to denounce a law of Congress (that concerning the draft,) as unconstitutional; allusions to the right of the people to resist unconstitutional laws were publicly made by him. The hint, by no means obscure, was eagerly taken by the supporters of the doctrine of State Rights; the disgraceful riots of July were the immediate consequence.

The evils, above enumerated, as resulting from the confusion created in the public mind by the use of *expressions* liable to be misunderstood, and consequently perverted by political demagogues, show how cautious the adherents of "National Sovereignty" ought to be, not to make any *admissions* giving specious pretexts to their opponents; the *admission* contained in the *N. Y. Times of Sept. 22d*, that—The *States* (viz.: States' Go-

vernments) had *granted* the powers which constitute "National Sovereignty"—is liable to be mystified by the specious argument—that the same authority that has *granted* powers, holds the right to control the exercise thereof, and that the Legislatures of the States have therefore the right to *interpose* their authority against Acts of Congress whenever they consider such Acts as unconstitutional.

The New York *Times* is well known as an able and warm supporter of "National Sovereignty"—it cannot be suspected to countenance doctrines undermining its correct bearing and true origin, except through oversight—it is, therefore, proper to call the attention of its editor to the fact, that such an oversight has taken place, so that it may be explained in order that it may be clearly shewn that the Doctrine of State Rights and State Sovereignty, as commonly understood, is not only antagonist to the Union, but is, positively, subversive thereof.

L. B.

N. Y., September 30th.

[The above communication to the New York Daily *Times* forms only part of the *continuation* of the article headed "The Constitution, No. 9," which had been intended to have been published in the *Evening Post*. The following remarks, forming part of said "continuation," corroborate forcibly the views taken therein, and on that account have found a place herein.]

It has been stated above, that Article VII. of the Constitution provides, in the following terms, the Covenant of its being binding *to the people* of each State, respectively.

"The ratification of the *conventions* of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying."*

Well, the *conventions* of eight States had, on the 23d of May, 1788, ratified the Constitution, and on the 21st of June following—the Convention of New Hampshire having sent its ratifi-

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* All the ratifications commenced with "We, the Delegates of the People;" and all terminated by making the ratifications "in the name of our constituents, the People."

cation—the adopted Constitution became thus binding to the *nine ratifying States.* To the people of the State of New Hampshire is due the credit of having *determined* and effected the union of the people of nine States for one common purpose, and of *thus merging the people of these nine States into one.* It was thus that the *American Union*, as George Washington termed it, was effectually established. The moment that the ratification of the requisite *ninth* convention of the people was duly received by the Congress of the Confederation, it became its imperative duty to organize at once the National Government, without waiting for any other ratification. The *convention* of the State of Virginia had kept back its ratification; a few State Rights men within said convention objected to some clauses of the adopted Constitution; but when the people of Virginia heard that the *American Union* was on the point of going into operation without them, they hastened to ratify it *such as it came from the hands of its framers, with the clauses objected to*, which became thus binding on Virginia as well as on the other ratifying States. The clause that was most objected to by State Rights men was the one which closes the enumeration of various Sovereign and National powers granted by the people to the General Government in Article 1st, Section 8, of the Constitution; said clause is as follows:

"To make all Laws which shall be necessary and *proper* for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

The above clause is actually *the controlling clause of the Constitution.* It determines clearly, the nature of the principles it is founded upon. These principles are, that the Powers granted to Congress in Article I, section 8, are *limited* by their *specialty*, but that each of these Powers includes the *general delegated Power* "to make all laws which shall be necessary and *proper* for carrying into execution" *such special Power;* the expression "proper," implies obviously, that Congress is to be the *Judge* of the *propriety* of the *means* to be enacted, &c.

The obvious bearing of the above controlling clause was, in the year 1791, the subject of a formal decision of the Supreme Court of the United States: a Bank of the United States

had been chartered by Congress; it was objected to by State Legislatures, &c., on the ground that Congress had not been vested with the *special* power to do it. This view of the subject was overruled by the Supreme Court. It decided unanimously—Chief Justice Marshall presiding—that Clause 18, in Section 8, of Article I of the Constitution, grants obviously to Congress the power to devise the means *proper* to be adopted for carrying out into execution any of its delegated powers. This important decision forms a precedent that cannot be reversed but by an amendment to the Constitution. It settles down the principle, that any law of Congress, fairly deducible from any of its delegated powers, is *the Supreme Law of the land*, and cannot be questioned by any State authority, either civil or judicial. This last point is expressly provided for in Clause 2d, Article VI., of the Constitution, laying down, in explicit terms, the *conservative principle*, that the laws of the United States "shall be the supreme law of the land, and *the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.*"

Clause 18, in Section 8, of Article I., above transcribed, was the very clause that was most objected to by the supporters of State Rights. Patrick Henry, one of the leaders of that party, denounced that clause as dangerous to the liberties of the people by pointing out that the implied powers clearly delegated to Congress in said clause, constitute *a consolidated power;* meaning thereby, according to his explanations, that it would lead to despotism, &c. The opinion expressed by Patrick Henry, that the principle and system of government *determined* and *laid down* in said clause, would constitute a consolidated power—*was correct;* but it merely consolidated UNITY in the form of government, which was the principal and great object avowed to be in view by the framers of the Constitution. As to the opinion expressed by Patrick Henry, that such a form of consolidated power would lead to despotism, he was completely wrong. Time has amply proved that such apprehension was erroneous, and, in fact, purely imaginary. It can be shown, on the other hand, that all the material difficulties that have occurred in the sound working of the Constitution, owe their origin and progress to the disorganizing and fallacious doctrine

of State Rights, based on the delusive assertion of State governments' sovereignty.

Washington, in his inaugural address to Congress, April 30th, 1789, alluding to the exercise of the power contained in Article V. of the Constitution, relative to amendments thereto, suggests, that Congress should carefully avoid "every alteration which might endanger the benefits of an *united* and effective government." This was a warning to those adherents of State Rights who were opposed to the implied powers vested in Congress—Clause 18 of Section 8 of Article 6 of the Constitutiou—the officials of the State governments had been powerless to prevent the people from divesting their own State governments, respectively, of the sovereign powers the State governments had assumed to exercise, they—the officials—had influence enough in many States to commit a number of their representatives in Congress to propose amendments to the Constitution with a view of getting one, among these amendments, intended to amend or nullify the *consolidating clause* above indicated, but they did not succeed; the majority of Congress were in favor of maintaining the *explicit* bearing of implied powers contained in said clause. Its opponents had therefore to be very cautious in the wording of any amendment having any bearing on the subject, lest their motives should be suspected; after three years of intrigues they obtained a majority of three-fourths of the Legislatures in favor of the following amendments:

Article X.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The States' Rights men of our day attach great importance to the above amendment and give it a meaning which, no doubt, would have been *properly expressed* if those that concocted it had not been aware, that it could not have been passed through

had they clearly disclosed therein the end they had in view ;* the amendment, in the form that it stands, does not invalidate, in the least, the obvious bearing of the implied powers contained in Clause 18, Section 8, of Article I.—An organic clause of the Constitution cannot be impaired by any future amendment, unless said amendment refers in explicit and direct terms to the clause intended to be amended.—Amendment X. does not refer to anything distinctly, and will puzzle the critical reader to make out its *precise* meaning ; it is, actually, nothing else than a loosely worded, vague and unmeaning declaration.

In order to uproot the dangerous perversion of the Constitution which the fallacious doctrine of State Rights had disseminated throughout the United States, it was not only requisite to show how it originated, and expose its utter fallacy, but it was, also, proper to investigate *the principle of the form of government* intended to be established by the framers of the Constitution. It has been shown above, by commenting on the obvious bearing of Clause 18, in Section 8 of Article I, that it determines clearly, that the principle upon which the Union had been based is, that the laws of Congress, fairly deducible from its delegated powers, are the supreme Laws of the Land. The avowed principal object of the framers of the Constitution was to *consolidate the Union*, and Washington thus expresses *the views of the Convention*, in the official notification of the adoption of the Constitution addressed to Congress by *unanimous orders of the Convention* : "In all our deliberations on the subject, we kept steadily in view that which appears to us the greatest interest of every true American—the *consolidation* of our Union." The deliberate purpose of *consolidating unity in the form of our Government* exhibits the wisdom and foresight of its framers ; they foresaw that party feeling, which is the natural consequence of free institutions, might be stirred up to a dangerous extent by party demagogues; that combinations and associations

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* Washington, in his Farewell Address to the people of the United States, alluded, no doubt, to some of the amendments to the Constitution, adopted 1791, in the following sentence : "One method of assault may be to effect in the forms of the Constitution alterations which will impair the energy of the system, and thus to *undermine what cannot be directly overthrown*".

of individuals or of State authorities might be formed to obstruct the execution of the laws; it was, with a view of encountering these perilous eventualities, that the President was entrusted with the *special duty* of preserving the Constitution, and was invested with ample powers to do so effectually; and also, that the legislative powers of Congress were constituted supreme over State authorities—*State laws and constitutions to the contrary notwithstanding*—so that the laws of Congress, fairly deducible from their delegated powers, cannot be questioned under the pretence of unconstitutionality by any State court, tribunal, or by any officials and Legislatures of State Governments. By these means, the framers of the Constitution had succeeded to devise a form of Government that had all the elements requisite to be transmitted unimpaired to future generations; it was sufficiently consolidated to allow the National Government to control, within constitutional bounds, the violence of party, quell factions, and crush sectional insurrection if need be; on the other hand, the democratic tendency of the House of Representatives being happily tempered by a conservative Senate, no apprehension need be entertained that these two bodies would ever agree to restrain the liberties of the people. Although the State Governments were not parties to the Constitution, permanent influence on the action of the National Government was guaranteed to them by a fundamental clause, providing "that no State, without its consent, shall be deprived of its equal suffrage in the Senate." The States, by means of their Senators, have an effective and legitimate influence, as neither legislation by Congress, nor negotiations with foreign powers, and even nominations by the President can take place, without the assent of the Senate; but beyond the above influence, they are debarred altogether by the Constitution from obstructing the action of the National Government. Any interference of State authorities against the *unity form* of the Government *ordained* by the people, constitutes a violation of the Constitution which ought to be at once prevented; and had this been done whenever such interference has been attempted, the existing rebellion would not have taken place.

At the time that the Constitution of 1788 went into operation, the peculiar form of Government that had been adopted was

well understood—no one thought of calling it *a confederation of sovereign States.* It was, indeed, notorious that it had been devised in obedience to popular feeling, for the purpose of *divesting the State Governments of the sovereign powers that they had assumed to exercise and to misuse;* and many of the officers of State Governments, who had lost considerable importance by the change in the form of Government, denounced the new form as constituting *a consolidated Government.* Their feelings in favor of State Sovereignty were, at that time, kept down, as they well knew that the people, at large, were opposed to it; but by degrees the doctrine of State Rights was insiduously circulated, and through these means the IMPOSTURE that the form of Government of the United States is "a confederation of sovereign States" got footing, and became the popular delusion of modern times, so that, in our days, it requires an elaborate investigation to expose its utter fallacy and to throw proper light on the political jugglery contrived by designing men to delude the public mind.

The general exposition of facts contained in this article, (see Appendix,) is intended, as stated on page 8, to exhibit to the light of truth *the trickery of the most impudent and barefaced* IMPOSITION *of the age.*

L. B.

REMARKS, A.

The underneath remarks were appended, in the shape of a note, to the tenth paragraph of "THE CONSTITUTION, No. 9," as published in the *Evening Post* of November 24th, last; they sum up and condense forcibly the constitutional points irrefutably established in said article, and it has been thought proper, in consequence, to reproduce herein said remarks more conspicuously and in larger type:

The connection of the above-recited provisions (see pages 4, 5,) proves that some of the leading framers of the Constitution foresaw the national dangers that might assail the Union. It proves, moreover, that they *all* understood the drift of public opinion and the unmistaken WILL of the sovereign people.—A more perfect Union under a *national government* was the general aspiration at the memorable period when a popular outcry was rife against the misrule and inefficiency of State governments, and the *embroiling*, jarring doctrine of State Rights.—The people, at large, did not mean that their *unity* under a national government should be put into jeopardy by any concerted acts of a minority of States. The framers of the Constitution acted in accordance to that well understood feeling, when they provided therein.

First, that "no State shall enter into any treaty, alliance, or confederation."

Further, that the violators of the Constitution, by "levying war against the United States," shall, by so doing, commit "treason."

Finally, that the Congress should be invested with the sovereign prerogative and the special duty "to declare the *punishment of treason*."

This solemn duty was thus specially delegated, in *general terms*, so that Congress might discriminate *and determine according to their judgment and discretion* the various grades of penalties to be inflicted.

An act of Congress, passed April 30, 1790, summarily enacts that any person or persons that "shall levy war against the United States," &c., and shall thereof be convicted, "shall suffer death."

This act, of course, may be modified or repealed; the *omnipotence* of Congress on the special point of declaring the punishment of treason cannot be contested. Congress, at any time, may enact such laws as will reach, discriminate, and determine the various grades of criminality attending an extensive rebellion.

APPENDIX.

W. Hickey's standard work on the Constitution of the United States is the best book to consult in order to understand correctly its true import and bearings:

First.—Because the Constitution, itself, therein given, bears the certificate of the State Department stating that it has been "critically compared with the original in this Department and found to be correct, *in text, letter, and punctuation.*"

Second.—Because it contains an elaborate Alphabetical Analysis of the Constitution, which greatly facilitates classing into the mind a correct understanding of the Paramount Law of the Country.

Lastly.—Because it comprehends the Declaration of Independence, the Articles of Confederation, the inaugural speech of Washington, the Ordinance of 1787, the *Official Proceedings* which led to the *formation* and to the adoption of the Constitution of the United States, together with other important documents, explanatory tables, general index, &c.; the whole ensemble throwing a flow of light on the events of the times, so as to enable the discerning mind to appreciate judiciously the connection of the *Facts* therein recorded.

The mass of a particular distinct class of historical documentary evidence contained in Hickey's standard work, beginning in 1782, running up to 1787, all pointing out, invariably, to the *fact*, that the people at large were *dissatisfied* with the *form* of Government established under the "Articles of Confederation," deserves particular notice, inasmuch that it shows not only the general discontent of the people, but because it furnishes abundant proof that the States' Governments could not agree with each other; their discordant and jarring action prevented their obtaining Treaties of Commerce with foreign nations. It became evident in the early part of 1787 that the Confederated Government, under the "Articles of Confederation," could not work any longer—disintegration was rapidly taking place. It was in consequence of the pressure of general popular discontent, of the remonstrance of true patriots, of the admonitions of statesmen, of wise and upright men, spread all over the country at that eventful period, that the officials of the States'

Governments were brought, at last, after an obstinate struggle of many years, to agree to appoint and send delegates to constitute a Convention with a view that said Convention might devise a *form* of Government in harmony with the wants and aspirations of a UNITED PEOPLE, recognizing the people as the rightful source of all power, not only theoretically, but in the actual possession and exercise of popular rights.

Any person of common intelligence, unwarped by preconceived ideas, cannot rise from a careful revision of the aforesaid "documentary evidence" without being impressed with the conviction that the "official proceedings" which led to the formation of the Constitution, divested of their usual form and technicalities, substantiate the following facts:

1. That the Members of the Congress of the Confederation, actuated by their own private convictions that a change in the *form* of Government was absolutely necessary; urged, moreover, by the pressure of public opinion and clamor, did, virtually, make a *formal demand* on the Legislatures of their own States *to surrender* into the hands of the people thereof the *sovereign* powers of a *general nature* which the several States' Governments had assumed and exercised under the "Articles of Confederation."

2. That twelve States' Governments out of thirteen yielded to that "demand" by appointing Delegates which were to meet in Convention for the special purpose of devising a Constitution intended *to be submitted to the people.*

3. That said Delegates did meet in Convention, at Philadelphia, on the 14th day of May, 1787, and after debates of about four months duration, agreed *unanimously* on a new Constitution whereto each Delegate subscribed his name on the 17th of September, 1787. The last article of the Constitution (Art. VII.) provides expressly that "the ratification of the Conventions of *nine States* shall be sufficient for the establishment of this Consitution *between the States so ratifying the same.*"

4. That the adopted Constitution was, by order of the Convention of the Delegates of the twelve States therein represented, transmitted, on the same day as that of its adoption, accompanied with the resolutions, passed unanimously, that it should be *laid* before the United States in Congress assembled, in order that it should be *submitted* to a *Convention of Delegates chosen* in each State *by the people thereof* for their assent and ratification.

5. That the Delegates of the Constituent Convention, in transmitting the Constitution, gave out their opinion and *directions* as to the proceedings which were to follow, in the following *resolution* adopted by them unanimously:

"*Resolved*,—That it is the opinion of this Convention, that as soon as the Conventions of *nine States* shall have ratified this Constitution, the United States, in Congress assembled, should fix a day," &c.

The sequel of this resolution is relative to the forms to be adopted for elect-

ing Senators, Representatives, Electors to choose the President, counting the votes, &c., &c. The resolution ends as follows:

"After he (the President) shall be chosen, the Congress, together with the President, should *without delay* proceed to execute the Constitution.

"By the unanimous order of the Convention,

"GEORGE WASHINGTON, *President.*

"WILLIAM JACKSON, *Secretary.*"

The above resolutions were transmitted to the President of the Congress, together with a letter from the President of the Constituent Convention, dated September 27th, 1787, so that the unanimously adopted Constitution, the resolutions relative to the mode of its ratification and execution, and the letter of George Washington in reference to the whole subject, bore all the same date. On the receipt of the Report of the Constituent Convention, including the above documents, Congress passed the following resolution:

"UNITED STATES IN CONGRESS ASSEMBLED,

"Friday, September 28, 1787.

"Present—(Twelve States, the names whereof follow.)

"Congress having received the Report of the Convention lately assembled at Philadelphia—

"*Resolved, unanimously*,—That the said Report, with the *resolutions* and *letter* accompanying the same, be transmitted to the several *Legislatures*, in order *to be submitted* to a *Convention of Delegates* chosen in each State *by the people thereof*, in *conformity to the resolves of the Convention* made and provided in that case."

It is important and proper to observe here, that the above series of circumstantial facts, 1 to 5, are faithfully deduced, quoted, and condensed from the "Official Proceedings," leading and accessory to the formation of the Constitution, and that their obvious drift and connection show conclusively, that the States' Governments, as such, were merely *passive agents* in its formation, adoption, ratification, and the setting up thereof, into operation.

That the only action that each State Legislature had been required to perform, after the Constitution had been framed and agreed upon by the Constituent Convention, was simply to recommend and *to submit* said Constitution, *integrally*, for ratification, to a *Convention of Delegates* chosen in each State *by the people thereof;* this had been done, as quoted above, in pursuance of *directions* transmitted to each State Government by the United States in Congress assembled, showing, palpably, that the *form of Government* styled "Articles of Confederation" no longer existed, inasmuch, that according to said "form of Government," the members of the United States Congress received their *instructions* each separately from his own respective State Government, whereas the States' Governments having *surrendered* the exercise of their sovereign powers by calling together a Convention of Delegates to devise a new Constitution, became, thereby, liable to receive *directions* from

Congress, that is to say, that the Members of Congress who, until then, had acted as *the mere agents of their respective State Governments*, became collectively the *controlling power* to direct the proceedings relative to the formation of the Constitution, its mode of ratification, and the organization of the Government preparatory to its going into operation.

The *people* of nine States out of the twelve which had met in Convention, acting as the rightful sovereigns thereof, having ratified, on the 21st of June, 1788, the adopted Constitution, the consequence therefrom was that until then these *nine distinct communities* were, by the very act of ratification, merged into *one*, as by so doing, they entered into a solemn compact to form *henceforth* but one people under a Constitution ordained by the whole people of these nine States *united into one common bond*, as is provided for in the Preamble of the Constitution.